

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KASHLESS, INC.,

Plaintiff,

v.

BUYWITHME, INC. and DEALON, LLC,

Defendant.

Civil Action No. _____

Jury Trial Demanded

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Kashless, Inc. ("Kashless" or "Plaintiff"), by and through its attorneys, for its Original Complaint against Defendants BuyWithMe, Inc. ("BuyWithMe" or "BWM") and DealOn, LLC ("DealOn") (collectively, "Defendants") demanding trial by jury, hereby alleges as follows:

I. NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271(a), to enjoin and obtain damages resulting from, as specified in herein as to each party, Defendants' unauthorized infringement of: U.S. Patent No. 6,101,484 ("484 Patent") issued on October 7, 2003 for "Demand aggregation through online buying groups," which is attached as **Exhibit 1**; U.S. Patent No. 6,604,089 (the "089

COMPLAINT - 1

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Patent) issued on August 5, 2003, for "Demand aggregation through online buying groups," which is attached as Exhibit 2; U.S. Patent No. 6,631,356 (the "'356 Patent") issued on October 7, 2003 for "Demand aggregation through online buying groups," which is attached as Exhibit 3; U.S. Patent No. 6,934,690 (the "'690 Patent") issued on August 23, 2005 for "System and method for extension of group buying throughout the internet" which is attached as Exhibit 4; U.S. Patent No. 7,146,330 (the "'330 Patent") issued on December 5, 2006 for "Method and system for creating and managing groups for increasing buying power on the world wide web" which is attached as Exhibit 5; and U.S. Patent No. 7,263,498 (the "'498 Patent") issued on August 28, 2007 for "Attaining product inventory groupings for sales in a group-buying environment" which is attached as Exhibit 6. Exhibits 1-6 are hereinafter referred to collectively as the "Patents".

2. Plaintiff Kashless seeks damages and prejudgment interest for Defendants' infringement. Plaintiff Kashless further seeks injunctive relief to prevent Defendant from continuing infringement of Plaintiff's valuable patent rights.

3. This is an exceptional case, and Kashless is entitled to damages, enhanced damages, attorneys' fees, costs and expenses.

II. THE PARTIES

4. Plaintiff Kashless, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 106 West Roy St., Seattle, Washington 98119.

5. Defendant BuyWithMe, Inc. is a Delaware corporation. BuyWithMe has its principal place of business located at 345 Hudson St, 13th Floor, New York, NY 10014. Defendant BuyWithMe conducts business within the State of Washington but has not

COMPLAINT - 2

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1 designated an agent for service of process in this State. Accordingly, Defendant BWM can be
 2 served with process by serving its registered agent for service of process at The Corporation
 3 Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE, 19801.

4 6. Defendant DealOn, LLC is a Delaware corporation. DealOn has its principal
 5 place of business located at 92 East Main St., Suite 405, Somerville, NJ 08876. Defendant
 6 DealOn conducts business within the State of Washington but has not designated an agent for
 7 service of process in this State. Accordingly, Defendant DealOn can be served with process
 8 by serving its registered agent for service of process at Blumbergexcelsior Corporate Services,
 9 Inc., 1220 N. Market Street Suite 806, Wilmington DE 19801.

11 III. JURISDICTION AND VENUE

12 7. This is an action for patent infringement which arises under the Patent Laws of
 13 the United States, in particular, 35 U.S.C. §§271, 281, 283, 284 and 285. This Court has
 14 jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1338(a).

15 8. Defendants are subject to personal jurisdiction in Washington because they
 16 regularly transact business in this judicial district and division by, among other things,
 17 offering its products and services to customers, business affiliates and partners located in this
 18 judicial district and division.

19 9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and
 20 1400(b) because the Defendant is subject to personal jurisdiction in this district.

23 IV. FACTUAL ALLEGATIONS

24 10. TIPPR LLC ("TIPPR") is a subsidiary of Kashless. TIPPR and its
 25 predecessor-in-interest, Mercata, have been leading pioneers and innovators in the area of
 26

1 group buying technology. TIPPR operates a group buying website, tippr.com, which utilizes
 2 Plaintiff's patented technology.

3 11. Defendants directly compete with Kashless and TIPPR in the group buying
 4 industry and operate competitive and infringing websites. Specifically, DealOn operates an
 5 infringing website at the URL <http://www.dealon.com>, and BuyWithMe operates an
 6 infringing website at the URL <http://www.buywithme.com/>.
 7

8 12. In addition to Kashless's patents, BuyWithMe has misused and
 9 misappropriated other intellectual property of Kashless. In connection with Cause No. 10-2-
 10 43928-5SEA, the Superior Court of Washington in and for King County entered an injunction
 11 precluding, *inter alia*, BuyWithMe's "using or disclosing Kashless's confidential
 12 information." A true and correct copy of the February 4, 2011 Order Granting Kashless's
 13 Motion for Preliminary Injunction is attached hereto as **Exhibit 7**.
 14

15 13. The Patents are directed to fundamental aspects of online group-buying.
 16 Kashless is the assignee and owner of all right, title and interest to the Patents. Kashless has
 17 the legal right to enforce the Patents, sue for infringement, and seek equitable relief and
 18 damages.
 19

20 V. PATENT INFRINGEMENT

21 14. Plaintiff Kashless realleges and incorporates herein paragraphs 1-13.

22 COUNT ONE 23 INFRINGEMENT OF U.S. PATENT NO. 6,604,089 (AGAINST BWM AND 24 DEALON)

25 15. Defendants, without the consent of Kashless, have infringed and continue to
 26 infringe the '089 Patent, as infringement is defined by 35 U.S.C. § 271(a). This infringement
 includes, but is not limited to, the establishment and utilization of an online buying group

1 system for aggregating demand, as indicated, *inter alia*, by the Defendants' implementation
 2 and utilization of their respective websites—buywithme.com for BWM and dealon.com for
 3 DealOn—and the systems and methods more fully described in the '089 Patent.

4 16. Neither Kashless nor any of its predecessors in interest in and to the '089
 5 Patent have granted Defendants a license or any other right to make, use, offer for sale, sell or
 6 import the invention defined by the claims of the '089 Patent.
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8 17. Defendants have indirectly infringed the '089 Patent by inducing the
 9 infringement of the '089 Patent and contributing to the infringement of the '089 Patent
 10 throughout the United States.

11 18. Kashless, through its subsidiary TIPPR, practices the invention claimed in the
 12 Patents and offers competing products and methods to the infringing system and methods
 13 utilized by Defendants.
 14

15 19. Defendants' aforementioned acts have caused damage to Kashless and will
 16 continue to do so unless and until enjoined.

17 20. Kashless requests an award of its actual damages caused by such infringement
 18 pursuant to 35 U.S.C. § 284.
 19

20 COUNT TWO
 21 INFRINGEMENT OF U.S. PATENT NO. 7,146,330 (AGAINST BWM AND
 22 DEALON)

23 21. Defendants, without the consent of Kashless, have infringed and continue to
 24 infringe the '330 Patent, as infringement is defined by 35 U.S.C. § 271(a). This infringement
 25 includes, but is not limited to, the establishment and utilization of method and/or system for
 26 creating and managing groups for increasing buying power on the world wide web, as
 indicated, *inter alia*, by the Defendants' implementation and utilization of their respective

1 websites—buywithme.com for BWM and dealon.com for DealOn—and the systems and
2 methods more fully described in the '330 Patent.

3 22. Neither Kashless nor any of its predecessors in interest in and to the '330
4 Patent have granted Defendants a license or any other right to make, use, offer for sale, sell or
5 import the invention defined by the claims of the '330 Patent.

6 23. Defendants have indirectly infringed the '330 Patent by inducing the
7 infringement of the '330 Patent and contributing to the infringement of the '330 Patent
8 throughout the United States.

9 24. Kashless, through its subsidiary TIPPR, practices the invention claimed in the
10 Patents and offers competing products and methods to the infringing system and methods
11 utilized by Defendants.

12 25. Defendants' aforementioned acts have caused damage to Kashless and will
13 continue to do so unless and until enjoined.

14 26. Kashless requests an award of its actual damages caused by such infringement
15 pursuant to 35 U.S.C. § 284.

16
17
18 COUNT THREE
19 INFRINGEMENT OF U.S. PATENT NO. 7,263,498 (AGAINST BWM AND
20 DEALON)

21 27. Defendants, without the consent of Kashless, have infringed and continue to
22 infringe the '498 Patent, as infringement is defined by 35 U.S.C. § 271(a). This infringement
23 includes, but is not limited to, the establishment and utilization of attaining product inventory
24 groupings for sales in a group-buying environment, as indicated, *inter alia*, by the
25 Defendants' implementation and utilization of their respective websites—buywithme.com for
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1 BWM and dealon.com for DealOn—and the systems and methods more fully described in the
2 ‘498 Patent.

3 28. Neither Kashless nor any of its predecessors in interest in and to the ‘498
4 Patent have granted Defendants a license or any other right to make, use, offer for sale, sell or
5 import the invention defined by the claims of the ‘498 Patent.
6

7 29. Defendants have indirectly infringed the ‘498 Patent by inducing the
8 infringement of the ‘498 Patent and contributing to the infringement of the ‘498 Patent
9 throughout the United States.

10 30. Kashless, through its subsidiary TIPPR, practices the invention claimed in the
11 Patents and offers competing products and methods to the infringing system and methods
12 utilized by Defendants.
13

14 31. Defendants’ aforementioned acts have caused damage to Kashless and will
15 continue to do so unless and until enjoined.

16 32. Kashless requests an award of its actual damages caused by such infringement
17 pursuant to 35 U.S.C. § 284.

18 COUNT FOUR
19 INFRINGEMENT OF U.S. PATENT NO. 6,934,690 (AGAINST BWM AND
20 DEALON)

21 33. Defendants, without the consent of Kashless, have infringed and continue to
22 infringe the ‘690 Patent, as infringement is defined by 35 U.S.C. § 271(a). This infringement
23 includes, but is not limited to, the establishment and utilization of a system and or method of
24 an extension of group buying throughout the internet, as indicated, *inter alia*, by the
25 Defendants’ implementation and utilization of their respective websites—buywithme.com for
26

1 BWM and dealon.com for DealOn—and the systems and methods more fully described in the
2 ‘690 Patent.

3 34. Neither Kashless nor any of its predecessors in interest in and to the ‘690
4 Patent have granted Defendants a license or any other right to make, use, offer for sale, sell or
5 import the invention defined by the claims of the ‘690 Patent.
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7 35. Defendants have indirectly infringed the ‘690 Patent by inducing the
8 infringement of the ‘690 Patent and contributing to the infringement of the ‘690 Patent
9 throughout the United States.

10 36. Kashless, through its subsidiary TIPPR, practices the invention claimed in the
11 Patents and offers competing products and methods to the infringing system and methods
12 utilized by Defendants.
13

14 37. Defendants’ aforementioned acts have caused damage to Kashless and will
15 continue to do so unless and until enjoined.

16 38. Kashless requests an award of its actual damages caused by such infringement
17 pursuant to 35 U.S.C. § 284.

18 COUNT FIVE

19 INFRINGEMENT OF U.S. PATENT NO. 6,631,356 (AGAINST DEALON)

20 39. Defendant DealOn, without the consent of Kashless, has infringed and
21 continues to infringe the ‘356 Patent, as infringement is defined by 35 U.S.C. § 271(a). This
22 infringement includes, but is not limited to, the establishment and utilization of an online
23 buying group system for aggregating demand, as indicated, *inter alia*, by DealOn’s
24 implementation and utilization of the dealon.com website and the systems and methods more
25 fully described in the ‘356 Patent.
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40. Neither Kashless nor any of its predecessors in interest in and to the ‘356 Patent have granted Defendant DealOn a license or any other right to make, use, offer for sale, sell or import the invention defined by the claims of the ‘356 Patent.

41. Defendant DealOn has indirectly infringed the ‘356 Patent by inducing the infringement of the ‘356 Patent and contributing to the infringement of the ‘356 Patent throughout the United States.

42. Kashless, through its subsidiary TIPPR, practices the invention claimed in the Patents and offers competing products and methods to the infringing system and methods utilized by Defendant DealOn.

43. Defendant DealOn's aforementioned acts have caused damage to Kashless and will continue to do so unless and until enjoined.

44. Kashless requests an award of its actual damages caused by such infringement pursuant to 35 U.S.C. § 284.

COUNT SIX

INFRINGEMENT OF U.S. PATENT NO. 6,101,484 (AGAINST DEALON)

45. Defendant DealOn, without the consent of Kashless, has infringed and continues to infringe the '484 Patent, as infringement is defined by 35 U.S.C. § 271(a). This infringement includes, but is not limited to, the establishment and utilization of an online buying group system for aggregating demand, as indicated, *inter alia*, by Defendant DealOn's implementation and utilization of the dealon.com website and the systems and methods more fully described in the '484 Patent.

46. Neither Kashless nor any of its predecessors in interest in and to the ‘484 Patent have granted Defendant DealOn a license or any other right to make, use, offer for sale, sell or import the invention defined by the claims of the ‘484 Patent.

COMPLAINT - 9

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48. Kashless, through its subsidiary TIPPR, practices the invention claimed in the Patents and offers competing products and methods to the infringing system and methods utilized by Defendant DealOn.

49. Defendant DealOn's aforementioned acts have caused damage to Kashless and will continue to do so unless and until enjoined.

50. Kashless requests an award of its actual damages caused by such infringement pursuant to 35 U.S.C. § 284.

VI. WILLFULNESS

51. Plaintiff Kashless alleges upon information and belief that, as of the date of the filing of this Complaint, Defendants have knowingly or with reckless disregard willfully infringed the Patents. Upon information and belief, Defendants had actual notice of infringement of the Patents, and acted despite an objectively high likelihood that their actions constituted infringement of Kashless's valid patent rights.

52. This objectively-defined risk was either known or so obvious that it should have been known to each Defendant. Kashless seeks enhanced damages pursuant to 35 U.S.C. § 284.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff Kashless respectfully requests that the Court:

1) Permanently enjoin Defendants, its agents, servants and employees, and all those in privity with Defendants or in active concert and participation with Defendants, from engaging in acts of infringement of the Patents (as asserted herein);

2) Award Plaintiff Kashless past and future damages together with interest to compensate for the infringement by Defendants of the Patents in accordance with 35 U.S.C. §284, and increase such award by up to three times the amount found or assessed in accordance with 35 U.S.C. §284;

3) Declare this case exceptional pursuant to 35 U.S.C. §285; and

4) Award Plaintiff Kashless its costs, disbursements, attorneys' fees, pre and post-judgment interest and such further and additional relief as is deemed appropriate by this Court.

Dated: February 18, 2011

Respectfully submitted,

By: /s/ Andrew G. DiNovo

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1 DATED this 18th day of February, 2011.

2 VANDEBERG JOHNSON & GANDARA,
3 LLP

4
5 By 
6 James C. Fowler, WSBA #15560
7 Attorneys for Plaintiff

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COMPLAINT - 12

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